SUPREME COURT OF THE UNITED STATES.

No. 116.

THE UNITED STATES, APPELLANTS,

vs.

FERNANDO TICO.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

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GIDEON, print.

Transcript of the proceedings in case No. 139—*Fernando Tico, claimant,* vs. *The United States, defendant—for the place named "Ojay."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this 30th day of March, anno Domini one thousand eight hundred and fifty-two, before the commission to ascertain and settle the private land claims in the State of California, sitting as a board, in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Fernando Tico, for the place named "Ojay," was presented and ordered to be filed and docketed with No. 139, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition, the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *January 6th,* 1853.

In case No. 139, Fernando Tico, for the place named Ojay, the deposition of Andres Pico, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 7 of this Transcript.)

SAN FRANCISCO, *August* 24, 1853.

Case No. 139 called, and ordered to the foot of the docket.

SAN FRANCISCO, *December* 31*st,* 1853.

In the same case, the deposition of Pedro C. Carrillo, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide pages 5 and 6 of this Transcript.)

SAN FRANCISCO, *January* 13, 1854.

In the same case, the affidavit of Fernando Tico, the claimant, made before Commissioner R. Aug. Thompson, with document marked "R. T. No. 1," annexed thereto, was filed.

(Vide pages 31 and 32 of this Transcript.)

In the same case, the depositions of Thomas E. Evershed and José Maria Covarrubias, witnesses in behalf of the claimant, taken before Commissioner R. Aug. Thompson, were filed.

(Vide pages 7 and 10 of this Transcript.)

SAN FRANCISCO, *May 2d*, 1854.

Case No. 139 was called; submitted on briefs, and taken under advisement by the board.

SAN FRANCISCO, *May 16th*, 1854.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board confirming the claim.

(Vide page 33 of this Transcript.)

SAN FRANCISCO, *August 15th*, 1854.

In the same case, on motion of the United States law agent, the following order was made, to wit:

(Vide page 40 of this Transcript.)

Petition.

To the honorable Commissioners to settle private land claims in California.

The petitioner, Fernando Pico, respectfully shows, that on the sixth day of April, A. D. one thousand eight hundred and thirty-seven, Juan B. Alvarado, governor of California, by virtue of the authority of his office, granted to the petitioner the tract of land known by the name of Ojay, within the boundaries marked on the map which accompanied his petition for the said grant, situate in the then jurisdiction of Santa Barbara, and in the now county of Santa Barbara.

That on the nineteenth day of April, A. D. one thousand eight hundred and thirty-seven, the deputation of California approved the said grant, in due form of law, copies of which grant, approval, and maps, are hereto annexed marked A, with translations marked B.

That the petitioner has done and performed all the requirements of the said grant necessary to make the grant aforesaid, full, perfect, and absolute.

That he knows of no interfering claim.

That the land has not been surveyed by the surveyor general of the United States, but that the boundaries are definite and well known.

That previous to the date of the said grant the petitioner was, and ever since has been, and now is, in the possession and occupation of the aforesaid tract of land.

The petitioner relies for confirmation of title upon the original papers, copies of which are hereto annexed, upon the documents and minutes concerning the same in the archives in the possession of the surveyor general, and such other proofs as she may be advised are necessary. Wherefore, he prays the commissioner to decide upon the validity of said grant to the petitioner, and to confirm the same.

By his attorneys,

HALLECK, PEACHY, & BILLINGS.

Filed in office, March 30th, 1852.

GEO. FISHER, *Secretary*.

Deposition of Pedro C. Carrillo.

OFFICE OF THE BOARD OF U. S. LAND COMMISSION, &c.,

SAN FRANCISCO, *Dec.* 31*st*, 1853.

This day, before Commissioner Thompson Campbell, came Pedro C. Carrillo, a witness in behalf of claimant, Fernando Tico, petition No. 139, and being sworn, his evidence being given in Spanish, was interpreted by the secretary as follows:

1 Quest. What is your name, age, and place of residence?

Answer. My name is Pedro C. Carrillo; I am thirty-seven years of age next February; and I reside in the city of Santa Barbara.

2 Quest. Are you acquainted with the rancho called Ojay?

Answer. I am acquainted with the said ranche.

3 Quest. Will you now state what you know concerning the occupation and inhabitancy of this rancho by Fernando Tico?

Answer. Said Tico established himself on the rancho Ojay, by permission from Pedro Blas, in the year 1836. He built a corral and a house or hut, built of sticks, in which he lived with his family. In the year 1837, he got the grant from the governor and built a fine adobe house, about three miles to the westward of the house which he first occupied, and I have known him to live, ever since that time, on the rancho with his family, cultivating, having cattle, horses, and sheep, on the place.

4 Quest. Will you please describe the boundaries of the tract of land known as Ojay?

Answer. On the east the boundary is the Arroyo of Sisa, on the west by the Arroyo Militija; on the north by the high mountains, and on the south the low hills. The mountains on the north are very distinct, and the southern boundary is also very distinct.

The rancho Ojay bounds on my rancho called Sexpe. The Arroyo de Sisa is called by that name, part of the way only, and at the southern end of it it is called Mosse.

5 Quest. Look on the maps now shown you, and which is a part of the espediente filed in this case, and marked A. T. C. No. 1, and state whether the said rancho is correctly represented on said maps?

Answer. I think it is.

6 Quest. State if you know the quantity of land embraced within the boundaries you have described?

Answer. I think about four leagues.

Associate law agent present.

PEDRO C. CARRILLO.

Sworn to and subscribed this 31st day of December, 1853.

THOMPSON CAMPBELL,
Commissioner.

Filed in office, December 31st, 1853.

GEO. FISHER,
Secretary.

Deposition of Andres Pico.

SAN FRANCISCO, *Jan'y 6th*, 1843.

This day, before Commissioner Harry J. Thornton, came Andres Pico, a witness in behalf of claimant, Fernando Tico, petition No. 139, and was duly sworn, his evidence being interpreted by the secretary.

My name is Andres Pico; my age is 42 years; I was born in California, and live in Los Angeles; I know the rancho called Ojay, it is in Santa Barbara county; Fernando Tico first occupied it in 1837, and has continued to occupy it ever since with cattle, horses, a house and corrals.

ANDRES PICO.

U. S. law agent present.

Sworn to and subscribed before me, this 6th day of January, 1853.

HARRY J. THORNTON,
Comm'r, &c.

Filed in office, January 6th, 1853.

GEO. FISHER, *Sec'y.*

Deposition of José Maria Covarrubias.

UNITED STATES LAND COMMISSION,
SAN FRANCISCO, *Jan'y 13th*, 1854.

On this day, before Commissioner R. Aug. Thompson, came José Maria Covarrubias, a witness in behalf of the claimant, Fernando Tico, case No. 139, who, after being duly sworn, deposed as follows, his testimony being interpreted by the secretary:

Present: Claimant's atty. and U. S. associate law agent.

Witness states his name to be José Maria Covarrubias; his age forty-five years; and residence Santa Barbara, California.

Question by claimant's attorney.—Look at the document now shown you purporting to be the original expediente relative to the place called Ojay, granted by the government of the department of California to citizen Fernando Tico, of the partido of Santa Barbara, and numbered 142 in the files of the archives of the former Mexican government in California, now in the office of the Surveyor General of the United States for the State of California, and this day produced before the commissioner by Thomas E. Evershed, the clerk in charge of said archives, as appears by his deposition this day taken and filed in this case; and state what you know of the genuineness and authenticity of said document, and whether you know any or all of the papers therein contained have ever, to your knowledge, been in the possession of Fernando Tico.

Answer. I have examined said original document; I know the signatures and rubricks of José Z. Fernandez Ximeno, Antonio Maria Osio, Juan B. Alvarado, Victor Prudon, Antonio Olivera, Fernando Tico, Arguello, Narciso Botello, Friar Blaz Ordaz, Carlos Antonio

Carrillo, Santiago Lugo, Raymundo Carrillo, José Muraga, Anastacio Carrillo, (signed Carillo,) sub-prefect of Santa Barbara, Governor Pio Pico, (signed Pico,) and Anastacio Carrillo. I have seen them all write, with the exception of José Muraga, and I have no doubt that they are all genuine, where they occur in said document. I have seen in the possession of Fernando Tico, about the year 1843, the following original document, now contained in said espediente: 1st. The certified copy of the map or diseño. 2d. The title-paper or grant dated 6th of April, 1837, and signed Juan B. Alvarado and Victor Prudon, secretary. 3d. Certificate of the approval of said grant by the territorial deputation, signed Juan B. Alvarado, president, a Victor Prudon, secretary, dated 13th of May, 1837. 4th. The petition of Fernando Tico to the Governor Pico, dated February 9th, 1846, with the marginal decree of the governor thereon, dated February 11th, 1846, which decree is in my handwriting, having been drawn up by me in my official capacity as secretary of the department.

Question by same. State, if you know, how said papers came out of the possession of Fernando Tico and got into the archives.

Answer. I do not know.

Question by same. State what you know in relation to the difficulty between Fernando Tico and the judicial office, in relation to the juridical possession of the land granted to the former.

Answer. In 1843 Fernando Tico had a dispute about boundaries with Manuel Cotta, complaint being made to Governor Micheltorena, who appointed a commission to investigate the matter, and I was requested by the commission to draw up their report to the governor, and it was at that time I saw in the possession of Fernando Tico the title-papers above referred to. The report of the commission was returned to the governor, but I do not know what action was had afterwards. In 1846 I again saw said paper; when Fernando Tico presented his petition to Governor Pico to obtain juridical possession of his land, he accompanied it by the papers in question as evidence of his title. I do not know what became of them afterwards.

Question by U. S. associate law agent: Do you know what were the circumstances which led to the refusal of the proper authorities to give the juridical possession of the land to Fernando Tico?

Answer. I do not.

JOSE MARIA CAVARRUBIAS.

Sworn to and subscribed before me, Jan'y 13, 1854.

R. AUG. THOMPSON,
Commissioner.

Filed in office, Jan'y 13th, 1854.

GEO. FISHER, *Sec'y.*

Deposition of Thomas E. Evershed.

Case No. 139.

UNITED STATES LAND COMMISSION,
SAN FRANCISCO, *January* 13, 1854.

On this day, before Commissioner R. Aug. Thompson, came Thomas E. Evershed, a witness in behalf of claimant, Fernando Tico, case No. 139, who, after being duly sworn, deposed as follows:

Present: Claimant's atty. and U. S. law agent.

Witness states his name is Thomas E. Evershed, and he is now clerk in charge of the archives of the former Mexican government in California, now in the office of the United States surveyor general for the State of California.

In obedience to the subpœna duces tecum this day served upon me, I bring a document filed among said archives, purporting to be the original expediente, relative to the place named Ojay, granted by the government of the department of California to citizen Fernand Tico, of the partido of Santa Barbara, and numbered in said files (142); I made the traced copy of the expediente now shown me, marked with the initials R. T. No. 1, and annexed to the affidavit of Fernando Tico filed in this case, and know the same to be a true and correct copy of said original document.

THOMAS E. EVERSHED.

Sworn to and subscribed before me, Jan'y 13th, 1854.

R. AUG. THOMPSON,
Comm'r.

Filed in office, January 13th, 1854.

GEO. FISHER, *Sec'y.*

[1] No. 1o.

Espediente relativo el parage nombrado "Ojay," concedido pr. el Gobierno de este Departamiento en fabor del C'no Fernando Tico, del partido de S'ta Barbara.

No. 142—Año de 1841.

[2] Sello Tercero, Dos Reales.

Habilitado provisionalmente por la aduana maratima de puerto de Monterey, en el departamiento de las Californias, para las años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

JIMENO. ANTONIO MARIA OSIO.

[*For map see original, page* 13.]

[3] Infraescriti s'crio de la E. junta del departamiento de las Californias, encargado interinam'to del despacho del mismo, certifique

que el plano que consta en las dos planillos antecedentes esta fielmente sacado de su original, que obra en el espediente respectivo y se halla en el archiva de la oficina de mi cargo. Y para que conste la presente en Monterey, á 11 de Deciembre, de 1840.

JOSE L. FERNANDEZ.

[4] El ciudadano Juan Bautista Alvarado, gobernador de estado, coronel de militar civico presidente de la eccelentisma diputacion del mismo.

Por cuanto el ciudadano Fernando Tico, ha pretendido pa. su benificio personal y el de su familiá el terreno conocido con el nombre de Ojay, dentro de los linderos del diseño que acompaño á su solicitud; practicadas previamente las diligencias y averiguaciones segun lo dispuesto por leyes y reglamentos de la materia usando de las facultades ql. me son conferidas, á nombre de la nacion Mejicana he venido en concedede el terreno mencionado, declarandole la propiedad de el por las presentes letras entendiendose dicha concesion con entera conformidad á las leyes á reserva de la aprobacion ó desaprobacion de la excelentisima diputacion y bajo las condiciones seguientes:

1o. El agraciado ni sus herederos podran dividir ni enagluar el que se les adjudica imponerle censo, vinculo fianza, hipoteca ni otro gravamen aunque sea por causa piadosa ni pasarlo á manos muertos.

2o. Podra sercalo sin perjudicar las travesias, caminos, y servidumbres, lo disfrutara libre y esclusivamente, destinandolo al uso ó cultivo que mas le acomode.

3o. Cuando se le conceda la propiedad solicitara del juez respectivo le de la posesion juridica en virtud de este despacho, por el cual se demarcaran los linderos, y pondrá sus mojoneras.

4o. El terreno de que se le hace donacion es puramente el que se expresa en la solicitud del interesado y se demarcan el diseño; y el juez que lo posesione, pasará aviso á este gobierno del numero de sitios que comprende.

En consecuencia mando que serviendole de titulo el presente y teniendose por firme y valedero se tome razon en el libro que corresponda, y se entregue al interesado para su resguardo y demas fines convenientes.

[6] Dado en la ex-Mision de S'ta Barbara, á 6 de Abril, de 1837.

JUAN B. ALVARADO,
VICTOR PRUDON, *Secretario.*

En 19 de Abril, aprovo la ex'ma diputacion la proposicion sig'to se concede el ciudadano Fernando Tico, el parage nombrado Ojay p. q. lo posea en propiedad pr. tener los requisitos necesarios conforme á la ley de 18 de Agosto, de 824, y el art'o 5o. del reglamento de 21 de Nov'bre, de 1828.

S'ta Barbara, Mayo 13, 1837.

JUAN B. ALVARADO.
VICTOR PRUDON, *S'cro Into.*

[7] El interesado agregara torgado un pliego de á seis fo.

V. PRUDHON.

[8] Sello Tercero, Dos Reales.

Habilitado por la administracion de la aduana maritima del puerto de Monterey, de la Alta California, á los años de mil ochocientos treinta y seis, y mil ochocientos treinta y siete.

GUTIERREZ. ANGEL RAMIREZ.

Balza para los años de 1839 y 1840.

ALVARADO. ANTONIO MA. OSIO.

S'or Juez de Paz de este Partida:

Fernando Tico de esta vecindad ante V. comparesca y dijo que habiendo obtenida por justos titulos que acompañola propiedad del terreno conocido con el nombre de Ojay, he de merecer de la justicia de V. se sirva pasar d'ho terreno para darme la posecion que es de ley.

FERNANDO TICO.

Sta. Barbara, D'bre 16, de 1840.

STA. BARBARA, 17 *de De'bre, de* 1840.

Por las occupaciones de preferencia que tengo en este juzgado ocurria el interesado al juez suplente pa. que le de la posecion juridica segun el diseño le demarca, que acompano con su respetivo titulo.

ANT. OLIVERA.

[9] Sello Tercero, Dos Reales.

Habilitado provicionalmente por la administracion de la aduana maritima del puerto de Monterey, de la Alta California, para los años de mil ochocientos treinta y seis, y mil ochocientos treinta y siete.

GUTIERREZ. ANGEL RAMIREZ.

Salga para los años de 1839 y 1840.

ALVARADO. ANTONIO MA. OSIO.

[10] Señor Prefecto de Este Distrito.

Fernando Tico, vecino del partida de Santa Barbara, ante V. S. con el debido respecto y como mas haya lugar en derecho comparezco y digo; que habiendo obtenido de las autoridades respectivas del departamiento el titulo de propiedad correspondiente á los terrenos conocidos por el nombre de Ojay, para mi beneficia y el de mi familia. Como lo acredita el documento y diseño que debidamente acompaño y faltandome la posecion á consiguiente y de estilo por que a los y cuando aquel lugar no se los han permitido sus ocupaciones a pesar de haber hecha en solicitud en tiempo oportuno pedio V. S. se digne mandar que se me posecion del espresado terreno por la autoridad que estime conveniente en concepto que siendo yo el Juez de Paz de Sta. Barbara, estay impedido para este caso por ser interes ó causa propia, por estas razones y la de tener alguna perdida ó perjuicio en los limites de dicho terrenos. A V. S. suplico se sirva disponer como llevo pedido de cuya gracia recivire reconocido.

FERNANDO TICO.

Angeles, Febrero 27, de 1841.

ANGL., *Feb'y* 27, *de* 1844.

Ocurra el interesado al S'or Juez de Paz, suplente del partido de Sta. Barbara, para que le de la posecion, q. solicita del paraje á q. se refiere con arreglo al titulo de consecion espidado pr. el gobierno en f'ha 6 de Abril, de 1837, y diseño q. le acompaña.

ARONELLO,
NARCISSO BOTELLO, *S'rio.*

[12] Sello Tercero, Dos Reales.

Habilitado provicionalmente por la aduana maritima del puerto de Monterey, en el departamiento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.

JIMENO. ANTONIO MA. OSIO.

[13] Sertifico yo, Fray Blas Oliba, ministro de la mision de S. Fernando Rey, ayandome de ministro en la de San Buena Ventura, el año de mil ochocientos treinta y seis, en compania del S. E. P. Frayo Bentura Frustimo, se consedio el sitio llam'do Ojay, pr. convenio de sus naturales, á D. Fernando Tico, desde el Arrollo Lisir hasta Matilija, comprendiendose en el paraje de San Antonio Abad como, asi consta en el diseño y pa. resguardo del interesado la firma.

FRA. BLAS ORDAZ.

San Fernando Rey, 28 de Fo., de 1841.

[14] S'or Juez de Paz, suplente de este municipio:

Fernando Pico, juez de paz, y de 1a instancia de esta poblacion y su jurisdicion, y vecino de partido, ante V. como me por haya lugar en derecho y al cuyo convenga se presenta y dice yo en virtud del decreto marginal del S'or Prefecto del 2de districto, f'ha 27 de Febrero, p. p. ao. q'l corre á la foja 1a del adjunto espediente, suplica á V. se sirve darle la posecion á q'l cal contrae de la cual recevrir conocido.

FERNANDO TICO.

Santa Barbara, Marzo 7, de 1841.

SANTA BARBARA, *Marzo* 7, *de* 1841.

El interesado en esta instancia representua, pa. el dia q. del presente, por si ó por opaderado, a recivir la posecion que solicita.

SANTIAGO LUGO,
RAY'NO CARRILLO.

[15] Carlos Antonio Carrillo, vecino de Sta. Barbara, certifico que año treinta y seis siendo, administrador de la ex-mision de Sta. Buena Ventura, se me presente por el mes de Junio de d'ho año, Don Fernando Tico con un documente firmado por los R. R. P. P. ministros de d'ho mision haciendole donacion del parage nombrado Ojay, y habiendo consultado con d'hos ministros el asunto me contestaron diciendome, ql. pr. parte de ellas y neofitos de aquel lugar cedean al S. Tico el mencionado parage pudiendose estender hasta donde demarca

el diseño, y yo como administrador en aquella veznole puse inconveniente ninguno: Constandome tambien que con el yo repetida documento se presente el solicitante á Dn. Mariano Chico, Gobierno, en este tiempo; de este departamento, quien le conteste ql. en el su puesto ql. tenia la donacion pr. las R. R. P. P. y sus naturales ql. bien podia ocuparlo; desde cuyo tiempo estay cierto ql. es poseedor del mencionado parage yo peticion del solicitante, y pa. los fines ql. convengan le day la presente en Sta. B'bara, 27 de Abril; de 1841.

CARLOS ANTO. CARRILLO.

[16] Juzgado de Paz, No. 2o, de San Buena Ventura:

El ciudadano Manuel Cote, se me ha presentado quejandose de q. V. ha hecho un corte de madera de Sa. Anto. Abad, rancho del citado Cota, sin aviso ni consentimiente; de esta virtud suspendera V. d'ho corte de madera asi como la saca de las cortadas del punto en ql. se hallan hasta ql. resuelva la superioridad, y se presentara en este juzgado à deducio su derecho, admita V. segundades de un consideracion y aprecio.

[17] Dios y Libertad! Sn. Buena Va., Enero 16, de 1846.

JOSE MORAGA.

Fernando Tico, vecino del puerto de Sta. Barbara, ante V. respetuosamente comparesco y dijo; que cregendome con esclusivo derecho de propiedad en el paraje que ocupa por pertenesce me por la concesion que de el me hizo solemmamente el superior gobierno departamental, cuyos documentos debidam'te acompaño procede à efectuar un corte de madera dentro de las limites del espresado paraje, y el vecino, Manuel Cota, me ho estorbada ó reclamado tal disposicion esponiendo que yo no tengo propiedad en hacer el referido corte de madera por pertenecer á el el mencionado paraje por lo que ocurro à la autoridad de V. para que si fuere de justicia se sirva advertirle al S'or Cota que tal provicion no tiene el derecho al asermelo por ser yo el unico dueño del referido paraje. Por tanto, a V. rendidamente suplico se sirba acceder á esta mi solicitud pr. serde justicia sobrendose adesta en papel comun, por no haber en este lugar el sellado à que corresponde. Juro lo necessario, &c.

Sta. Barbara, Enero 25, de 1846.

FERNANDO TICO.

[18] S'or Dn. Fernando Tico, S'or sub-prefecto de este puerto:

Sta. Barbara, Enero 26, de 1846.—Esta sub-prefa. se ha impuesto detenidamente de la presente instancia como tambien de los documentos que acompaño el interloado por los cuales acredita ser duenà del paraje ql. posea, y por lo mismo hay asele saberal ciud'no Manuel Cota, por el Juez de Paz de S. Buena Ventura, que Tico queda en entera libertad, pa. emprender cualquera obra en el terreno mencionado pa. su benificio.

CARRILLO.

[19]

[20] Ex'mo S'r Gobernador:

Fernando Tico, vecino del partido de S'ta Barbara, ante V. E., con el debido respeto; y bajo los terminos mas conformes á derecho; comparesco, deciendo ql. siendo frecuentes los trastornos ql. estay sufriendo pr. faltas de la posecion juridica ql. hago entender á mis colindantes los limites de mi rancho nombrado Ojay, ql. poseo en propiedad con juste y legal titulo hace como diez años, suplico á V. E., se sirba librarse la orden respectiba ha ql. se verifique d'ha posecion, pues aunque desde el año de mil ochocientos cuarenta estay solicitandole y este embargo de haberse asi mandado pr. las autoridades superiores como lo acredita el espediente No. 1o. 100, à faltado modo de interperter se y queda ilusorias las referidas hordenes. Por le espediente No. 2o., ql. igualmente acompaño quedara V. E., impuesto de la ultima question ql. me promovio el C'no M'l Cota, sin derecho alguno para ello pr. ql. la madera fue cortado en terrenos de mi propiedad, y lla para equibicacion ó bien de malicia, trato de enterpecione mis trabajos como lo consigne obligandome á emprender viage á S'ta Barbara, de lo que no tenia llo necessitad y suspender los hasta concluir este negocio. Por lo espuesto y documentos adjuntos vera V. E. la justicia, ql. me asiste y no dudo de su acreditada justificacion me sera empartida pa. poder continuar mis quedareses ni las molestias y incomidades ql. hasta ahora se me estan hocacionando quisa por la falta de aquel requisitos. Gracia ql. implora tuvo lo necesario, etc.

Dagnados admitir pr. en este papel comun por falta del sellado correspondiente.

Sn. Buena Ventura, Feb'o 9, de 1846.

FERNANDO TICO.

Angeles, *Febrero* 11, *de* 1846.

Pase al sub-prefecto de S'ta Barbara, para que informe y dija cuales son los motivos que han tenido los jueces de dicho S'ta Barbara, para no haber puesto en posecion del terreno, de Ojay a la puete que representa.

TICO.

En complimiento del decreto superior ql. antecede, esta sub-prefectura sea impuesto de los documentos que devidamente acompaño, bajo las numeros uno y dos, le a paecido combemente incluir los á esta representacion, pa. el que el gobierno se imponza de los causos ql. enterpecieron la legitima posecion de Sr. Fernando Tico, en el parage en question supromiento cuales que era otra clare, de informe por considerar suficientes los documentos indicados.

S'ta Barbara, Marzo de 7, 1846.

ANAST'O CARRILLO.

[22] [ ] No S. C. habiendose hecho nubrere clamo á esta prefectura, sobre el parage nombrado S'or Antonio Abad, suspendarse V., la posecion solicitada pr. el S'or Tico, juez propietario de ese punto

á quien hará V. vuelva á presentar sus documentos del sitio Ojay á esta prefectura pr. medio de apoderado, asi como á los S'res Balentin y Manuel Cota, concurran con los que tengan p. si, ó p. personas que los representen legitimamente pa. terminar las dudas ó deferencias.

Dios y Libertad!

[23] Angeles, Marzo 10, de 1841.

S. ARGUELLO.

[24] S'or Juez de Paz, suplente del partido de S'ta Barbara, No. 2.

[ ] Quedo enterado de la contestacion de V. f'ha 16 del corriente relativa á haber suspendido la conclusion del esped'to de posecion ql. ya habra dado al S'or Tico, del parage nombrado Ojay, cuando llego la orden de esta prefectura sobre el particular, y habiendo complido con su obligacion debe permanecer el asunto en ese Estado hasta nuevo resolucion y para su pronta conclusion hara ql., presente

[25] sus documentos el S'or Tico á esta prefectura p. si ó p. apoderado conforme antes se lo he prevenido; y me informará V. si en las medidas practicadas en Ojay comprendir á S'or Antonio Abad.

Dios y Libertad!

Angeles, Marzo 30, de 1841.

S. ARGUELLO.

S. Juez de Paz, suplente del partida del Santa Barbara.

B.—*Translation of Title Papers.*

Citizen Juan Bautista Alvarado, Governor of the State, Colonel of the Militia, and President of the most Excellent Deputation of the same:

Whereas citizen Fernando Tico has, for his own personal benefit and that of his family, petitioned for the land known by the name of Ojay, within the boundaries marked on the map which accompanied his petition, the proper measures being previously taken, as required by laws and regulations on the matter, using the faculties which are confined in me in the name of the Mexican nation, I have granted him the aforesaid land, declaring to him the ownership of it by these presents, said grant being understood to be in entire conformity with the laws, subject to the approval or disapproval of the most excellent deputation, and under the following conditions, viz:

1st. Neither the grantee nor his heirs can alienate or divide that which is granted to him; subject it to any tax, entail, pledge, mortgage or other incumbrance, even for religious purposes, nor convey it in mortmain.

2. He may enclose it without prejudice to the roads, cross-roads and servitudes, and enjoy it freely and exclusively, by making such cultivation and uses of it as he may see fit.

3. When the property is granted to him he shall request the proper magistrate to give him juridical possession in virtue of this order, by whom the boundaries shall be marked out and the bounds placed.

4. The land granted in donation is solely that marked on the map, and the magistrate who may give the possession will report to this government the number of sitios it contains.

In consequence, I order, that serving for a title these presents, and being held as firm and valid, note to be taken of them in the corresponding book, and they be delivered to the party interested for his security and other convenient purposes.

Given in the ex-Mission of Santa Barbara, on the 6th of April, 1837.

(Signed) JUAN B. ALVARADO,
(Signed) VICTOR PRUDON,
Secretary ad interim.

On the 19th of April, the most excellent deputation approved the following proposition: The place called Ojay is granted to citizen Fernand Tico, that he may possess it in fee, as he has all the qualities required by the law of Aug. 18th, 1824, and article 5th of the regulation of November 21st, 1828.

Santa Barbara, May 25th, 1837.

(Signed) JUAN B. ALVARADO,
President.
(Signed) VICTOR PRUDON,
Secretary.

The interested party will attach a sheet of the stamps of six dollars.
(Signed) PRUDON.

To the Justice of the Peace of this Partido:

I, Fernando Tico, of this vicinity, before you appear and represent, that having obtained by legal titles, which I transmit herewith, the ownership in fee of the land known by the name of Ojay, I have to request your honor that you will be pleased to go to said land to give me the juridical possession required by law.

Santa Barbara, December 16th, 1840.

(Signed) FERNANDO TICO.

SANTA BARBARA, *December 17th*, 1840.

By reason of previous engagements which I have in this court, the person interested will apply to the provisional magistrate, that he may give him the juridical possession, as shown by the map which accompanies his title.

(Signed) ANTONIO OLIVERA.

To the Prefect of this district:

I, Fernando Tico, resident of the partido of Santa Barbara, before your honor, with due respect and in the most proper form, appear and represent, that having obtained from the proper authorities of the department the title of grant of the lands known by the name of Ojay, for my benefit and that of my family, as shown by the document and

map, which I duly accompany herewith, and wanting the possession which ought to follow and is customary, because the engagements of the magistrates of that place have not allowed them, although I made the request at a fit time. I pray your honor to be pleased to order that I may be put in possession of said land, by the authority you may think proper, seeing that I, as justice of the peace, cannot do it, being an interested person and the cause my own; for these reasons, that I fear some loss or prejudice in the limits of said lands, I pray your honor be pleased to grant, as I have requested, for which favor I will be acknowledged.

Angeles, February 27th, 1841.

(Signed) FERNANDO TICO.

ANGELES, *February 27th*, 1841.

Let the interested party apply to the provisional justice of the peace of the partido of Santa Barbara, that he may give him the possession which he requests of the place referred to, in conformity with the title of grant, executed by the government on the sixth of April, 1837, and the map which accompanies it.

(Signed) ARGUELLO,
(Signed) NARCISO BOTELLO, *Secretary.*

I, Friar Blas Ordez, minister of the Mission of San Fernando Rey, certify, that being minister of that of San Buenaventura, in the year one thousand eight hundred and thirty-six, in company with the Rev. Father Friar Ventura Fortuni, the place called Ojai was ceded, by agreement of both the fathers, with the consent of the natives, to Don Fernando Tico, from the arroyo of Sjsa to Matitija, the place of San Antonio Abad, being included in it, as appears by the map; and for the security of the party I sign it.

San Fernando Rey, Feb. 28th, 1841.

(Signed) FREY BLAS ORDEZ.

To the provisional Justice of the Peace of this municipality:

Fernando Tico, justice of the peace, and judge of first instance of this town and jurisdiction, and resident of the partido, before you, in the manner most legal and favorable for him, appears and says: That in virtue of the marginal decree of his honor, the prefect of the 2nd district, dated February 27th, ult'o, which is on folio 1 of the annexed expediente, he prays you will be pleased to give him the possession to which he confines himself, which he will acknowledge.

Santa Barbara, March 7th, 1841.

(Signed) FERNANDO TICO.

SANTA BARBARA, *March 7th*, 1841.

The party interested in this instance will present himself on the 9th instant, either personally or by attorney, to receive the possession which he solicits.

(Signed) SANTIAGO LUGO,
(Signed) RAYMUNDO CARRILLO.

I, Carlos Antonio Carrillo, resident of Santa Barbara, certify, that in the year thirty-six, being administrator of the ex-Mission of San Buenaventura, in the month of June of that year, Don Fernando Tico presented himself, with a document signed by the reverend fathers, ministers of said mission, granting to him the place named Ojay; and having referred the matter to said ministers, they repeated, that on their part and that of the neophytes of that place, they ceded to the Señor Tico the said place, in extent that which is marked on the map; and I, as administrator, at that time offered no objection; and I am also aware that the petitioner presented himself with the said document to Don Mariano Chico, at that time the governor of this department, who replied to him, that, with the understanding that he had the grant from the reverend fathers and the natives, he might safely occupy it; and I am certain that since that time he has possessed said place, and at his request, and for the purposes which it may serve, I give these presents in Santa Barbara, on the 27th of April, 1841.

(Signed) CARLOS ANTONIO CARRILLO.

OFFICE OF JUSTICE OF THE PEACE OF SAN BUENAVENTURA.

Citizen Manuel Cota has appeared before me, complaining that you have placed a saw-pit on the arroyo belonging to San Antonio Abad, the rancho of said Cota, without his knowledge or consent; in this case, you will suspend the operations of said saw-pit, as soon as you have removed that already cut from the place where it is, until the authorities shall decide the matter, and you will present yourself in this court to show your right.

Receive the assurances of my consideration and esteem.

God and liberty! San Buenaventura, January 16th, 1846.

(Signed) JOSE MORAGA.

To DON FERNANDO TICO.

To the Sub-Prefect of this Partido:

I, Fernando Tico, resident of the port of Santa Barbara, before you respectfully appear and say:

That believing I had the exclusive right in the place which I occupy, it having been solemnly granted to me by the superior departmental government, the document of which I duly transmit herewith, I proceeded to establish a saw-pit on the limits of said place, and the resident, Manual Cota, has interfered with, or claimed that right, asserting that I have no right to establish said saw-pit, as the afore-mentioned place belongs to him, for which reason I apply to you, that, if you think it just, you would be pleased to inform Señor Cota that he has no right to prohibit me this, as I am the only owner of said place.

Therefore, I earnestly beseech you to grant this my request, as it is a just one, and that you admit this on common paper, as there is in this place none of the corresponding stamps.

I swear as required by law.

Santa Barbara, January 25th, 1846.

(Signed) FERNANDO TICO.

SANTA BARBARA, *January 26th*, 1846.

This sub-prefecture has carefully examined this instance, and the documents which the party interested transmitted, which prove him to be the owner of the place which he possesses; therefore, let the justice of the peace of San Buenaventura make it known to citizen Manuel Cota, that Tico is at liberty to undertake any operations in the said place for his benefit.

(Signed) CARRILLO.

No. 1—Civil Prefecture of Los Angeles.

A new claim having been made before this prefecture, of the place called San Antonio Abad, you will suspend the possession solicited by Señor Tico, regular magistrate of that place, who you will cause to present again his documents of the place Ojay to this prefecture, by his attorney; as also, that the Señores Belantin and Manuel Cota appear with those which they may have, either personally, or by persons who may legally represent them, to terminate these doubts and differences. God and liberty!

Angeles, March 10, 1841.

(Signed) S. ARGUELLO.

To the provisional Justice of the Peace of Santa Barbara.

No. 2—Civil Prefecture of Los Angeles.

I have received your answer dated the 16th instant, relative to having suspended the conclusion of the expediente of possession which you had already given to Señor Tico, of the place named Ojay, when the order of this prefecture on the matter arrived; you have acted rightly, and the matter ought to remain in this state until a new decision is made; and in order that it may soon be terminated, you will cause Señor Tico to present his document to this prefectura, personally, or by attorney, as before directed, and you will report to me whether the measurements made in Ojay include San Antonio Abad. God and liberty!

(Signed) S. ALGUILLO.

To the Justice of the Peace (provisional) of Santa Barbara.

To his Excellency the Governor:

I, Fernando Tico, resident of the partido of Santa Barbara, before your excellency, with the proper respect, and in the manner most conformable to law, appear, saying, that the reverses being frequent which I am suffering for want of the juridical possession which may give my neighbors to understand the boundaries of my rancho, named Ojay, which I have possessed in fee with a just and legal title for about ten years, I pray your excellency be pleased to issue the proper order, that said possession may be given to me; for, although I have been requesting it since the year one thousand eight hundred and forty, and although the superior authorities have ordered it, as shown by expediente No. 1, there has not been wanting some way of rendering

it null, and that said orders should remain uncomplied with. By expediente No. 2 which I also transmit, your excellency will see what was the last question started against me by citizen Manuel Cota, without any right to do so, for the wood was cut on my own lands, and, either through mistake or malice, he endeavored to prevent my operations, which he succeeded in doing, obliging me to undertake a journey to Santa Barbara, which there was no other occasion for, and suspend them until this matter is finished. By that which I have explained and the annexed documents, your excellency will see the justice which is in my favor, and I doubt not, from your well-known justice, it will be granted to me; that I may be able to continue my operations without the molestation and inconveniences which they have occasioned me heretofore, perhaps, for want of that requisite, a favor which I implore. I swear as required by law, &c. &c. Please admit this on common paper, there being none of the stamps corresponding.

Santa Barbara, Feb'y 9th, 1846.

(Signed) FERNAND TICO.

ANGELES, *Feb'y 11th*, 1846.

Pass this to the sub-prefect of Santa Barbara to report upon, and say what are the motives which the magistrates of Santa Barbara have been governed by, that they have not put the party in possession of Ojai.

(Signed) TICO.

In compliance with the foregoing superior decree, this sub-prefectura having informed itself of the documents which accompanied it, numbered one and two, it has thought proper to include them with this representation, that the government may be informed of the causes which hindered the legal possession of Don Fernando Tico in the place in question.

Every other kind of information as the said documents are considered sufficient.

Santa Barbara, March 7th, 1846.

(Signed) ANASTACIO CARRILLO.

Filed in office, March 30th, 1852.

GEO. FISHER, *Sec'y*.

Affidavit of Fernando Tico.

No. 139.—In the claim of Fernando Tico to Ojay.

Fernando Tico deposeth and saith, that he is the claimant in this case; that about the month of February, 1846, he left the original title-papers or concession made to him by Governor Alvarado in 1837 in the hands of Governor Pio Pico, to whom he applied for an order for juridical possession; that Governor Pio Pico gave the order accordingly; that deponent neglected to apply immediately for his title-papers, and left them in the hands of said Pico.

That the war between the United States and Mexico followed in a

few months, and said Pico left California for Mexico; that deponent then sent for his title, and found that it had been deposited by said Governor Pico in the archives of the government.

That deponent afterwards applied to the keeper of the archives, Mr. W. E. P. Hartnell, for said original title, but that said Hartnell, having no authority to deliver any original papers from the archives, gave to deponent a certified copy.

That deponent has seen said original title in the archives under the charge of the surveyor general; it is filed in the expediente No. 142, of which a duly certified copy is filed herewith, marked R. T. No. 1; said paper title in said expediente No. 142 is the original concession given to deponent by Governor Alvarado in the year 1837, and by deponent left in the hands of Governor Pico in 1846, for the reasons above given, and accidentally deposited in the archives.

That deponent never surrendered said title nor renounced his claim to said rancho of Ojay, but has continually occupied and claimed it as the legal owner.

FERNANDO TICO.

Sworn and subscribed before me, January 13th, 1854.

R. AUG. THOMPSON,
Commissioner.

Filed in office January 13th, 1854.

GEO. FISHER, *Sec'y.*

Opinion of the Board.

FERNANDO TICO vs. THE UNITED STATES. } Case No. 139.—Ojay—Claim by metes and bounds.

SANTA BARBARA COUNTY.

The petitioner in this claims to derive his title by virtue of a grant made to him by Governor Juan B. Alvarado on the sixth day of April, 1837, of the tract of land known by the name of Ojay, within the boundaries marked on the map, situated in the present county of Santa Barbara, which grant was duly approved by the Territorial department on the 19th of April, 1837.

The only question of any difficulty presented in the case arises from the fact that the original title and certificate of the approval of the deputation are not filed by the petitioner, but in lieu thereof he offers copies from the archives in the office of the Surveyor General, where it is alleged the originals are deposited.

Upon this point the claimant has filed his affidavit, setting out that about the month of February, 1846, he left the original title-papers, made to him by Governor Alvarado, in 1837, in the hands of Governor Pio Pico, to whom he applied for an order for juridical possession; that he neglected to apply afterwards for his title-papers, and left them in the hands of the said Pico.

That the war between the United States and Mexico followed in a few months, and said Pico left California for Mexico; that he then sent for his title, and found that it had been deposited by said Pico in the archives of the Government; that he (the claimant) afterwards applied to the keeper of the archives, W. E. P. Hartnell, for said original title, but said Hartnell having no authority to deliver any original papers from the archives to deponent, a certified copy.

That deponent has seen said original title in the archives, under the charge of the surveyor general. It is filed in expediente No. 142, of which a certified copy is filed *is filed* with his affidavit, marked R. T. No. 1.

He also avers, that said paper title in said expediente No. 142, is the original concession given to deponent by Governor Alvarado in 1837, and by deponent left in the hands of Governor Pico, in 1846, for the reasons above given, and accidentally deposited in the archives.

That deponent never surrendered said title nor renounced his claim to said rancho of Ojay, but has continually occupied and claimed it as the legal owner.

Thomas E. Evershed deposes that he is now a clerk, in charge of the archives of the former Mexican government in California, now in the office of the United States Surveyor General; that in obedience to a subpœna duces tecum issued by the commission, he brought a document filed among said archives, purporting to be an original expediente, relative to the place named Ojay, granted by the government of the department of California to citizen Fernand Tico, of the partido of Santa Barbara, and numbered in said files (142;) that he made the traced copy of "the" said expediente, then before him, marked with "the" initials R. T. No. 1, annexed to the affidavit of Fernando Tico, and filed in this case, and that he knows the same to be a true and correct copy of said original document.

José Maria Covarrubias, whose deposition was taken on the same day with said original document before him, as proven and identified by the preceding witness, proves the genuineness of the signatures of Juan B. Alvarado, governor, and Victor Prudon, secretary, to the original grant and certificate, of the approval of the deputation contained in it, as also the genuineness of the other signatures contained in said expediente, except that of José Moraga, with which he is unacquainted.

He also testifies, that in the years 1843 and 1846 he saw the following original papers, now contained in said expediente, in the possession of the claimant, Fernando Tico:

1st. The certified copy of the map or diseño.

2nd. The title-paper or grant dated April 6th, 1837, and signed Juan B. Alvarado, and Victor Prudon, secretary.

3rd. The certificate of the approval of said grant by the territorial deputation, signed by the same persons, and dated 13th of May, 1837.

4th. The petition of Fernando Tico to Governor Pico, dated February 9th, 1846, with the marginal decree of the governor thereon, dated February 11th, 1846, which decree is in his handwriting, having

been drawn up by him in his official capacity of secretary of the government.

That in 1843 a dispute arose between the claimant and Manuel Cota in relation to their boundaries, and the governor appointed a commission to investigate the matter, and the witness was requested by them to draw up the report to the governor, and it was at that time that he saw the title-papers above referred to in the possession of the claimant, Tico.

That he again saw said papers when Tico presented his petition to Governor Pico, in 1846, for the purpose of obtaining juridical possession, his petition being accompanied by said original title-papers. This evidence is already sufficient to establish the facts, that a grant of the land was issued by the governor in favor of the present claimant, and *and* duly approved by the territorial deputation.

That the title so issued was delivered to the grantee, and that the document contained in the expediente in the archives, purporting to be said original grant and certificate of approval, are the same title-papers which were originally delivered to the claimant.

The fact that evidences of his title have been placed beyond his reach, and could not be produced on the trial, by circumstances over which he had no control, cannot affect its validity or the rights which he acquired under it. Even if the grant had been lost, and its execution and contents had been proved by legal and competent testimony, it would have been sufficient to establish its validity à fortiori.

The proof of its existence in the archives, accompanied by a copy duly certified by the proper officer, ought to be sufficient for the same purpose. The existence and genuineness of the title being established, the only remaining questions for consideration are, the sufficiency of the description contained in the grant, and the due performance of the conditions imposed by it.

These points present no obstacle to the confirmation of the claim. The grant describes the land as that known by the name of Ojay, within the boundaries marked on the map which accompanies the petition, and in the 4th condition, as solely that marked on the map, and the magistrate who may give the juridical possession will report to the governor the number of sitios it contains.

No juridical possession appears to have been given, though the expediente shows repeated attempts on the part of the grantee to obtain it, ending with his application to the governor, in 1846.

This deficiency is, however, amply supplied by the other evidence in the case. Pedro Carrillo, whose deposition is filed in the case, proves the boundaries to be, on the east the arroyo of Sisa, on the west by the arroyo of Matitigan, on the north by the high mountains or sierra, and *and* on the south by the two hills, and that it contains about four square leagues.

This description corresponds with that delineated on the map, to which reference is made in the grant.

The latter represents the land as valley lying between the sierra and

two hills on the north and south, and the two creeks on the east and west, being about four leagues in length and about one league in width at the western boundary, diminishing to about a half a league on the eastern.

This description is sufficient to segregate the land, and enable a surveyor to identify and establish its boundaries.

It is in proof that the grantee occupied the land in 1836, before he obtained the grant, with a small house or hut, in which he lived with his family.

That in the year 1837, after he obtained the grant, he built a fine adobe house on it, in which he has lived ever since, cultivating the land, and having on it stocks of cattle, horses and sheep.

Filed in office, May 16th, 1854.

GEO. FISHER, *Sec'y.*

Decree of Confirmation.

FERNANDO TICO vs. THE UNITED STATES. } Case No. 139.

In this case, on hearing the proofs and allegations, it is argued by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed.

The land of which confirmation is made is situated in the county of Santa Barbara, and is known by the name of Ojay, being the same which has been held and occupied by the claimant since the date of the grant, and is bounded as follows:

On the west by the Arroyo de Matiligan, on the north by the sierra, on the east by the Arroyo de Sirsar, and on the south by the two hills, and containing four square leagues, more or less, as shown by the map filed with the expediente, to which reference is made in the original grant for the description, a copy of which, together with the said grant, are filed with the papers in the case.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office, May 16th, 1854.

GEO. FISHER, *Sec'y.*

And it appearing, to the satisfaction of this board, that the land hereby adjudicated is situated in the southern district of California, it is hereby

Ordered, that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain the private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty pages, numbered from 1 to 40, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 139, on the docket of the said board, wherein Fernando Tico is the claimant against the United States, for the place known by the name of Ojay.

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this second day of December, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[G. F.]

(Signed) GEO. FISHER.

UNITED STATES DISTRICT COURT,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES.

I, Charles E. Carr, clerk of the district court of the United States for the southern district of California, do hereby certify that the foregoing forty-one pages, numbered from 1 to 41, both inclusive, contain a full, true and correct copy of transcript No. 139, filed in this office, wherein Fernando Tico is appellee and the United States appellant, for "Ojay."

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Los Angeles, California, this 16th day of January, A. D. 1856, and of the independence of the United States of America the eightieth.

[SEAL.]

C. E. CARR, *Cl'k.*

DISTRICT COURT OF THE UNITED STATES,
Southern District of California.

CLERK'S OFFICE, LOS ANGELES COUNTY.

FERNANDO TICO, appellee, ads. THE UNITED STATES, appellants. } Docket No. 168. Transcript No. 139.

Be it remembered, that on this 19th day of December, A. D. 1854, in the district court of the United States for the southern district of California, the following proceedings were had, to wit: a duly certified transcript of the proceedings and decision of the commission to ascertain and settle the private land claims in the State of California, when sitting as a board, in the case wherein Fernando Tico is the claimant against the United States for the place named "Ojay," was received, and filed and docketed with No. 168, and is as follows, to wit:

(Vide page 1.)

Los Angeles, *April* 10*th*, 1855.

In case No. 168, Fernando Tico for "Ojay," the notice of appeal from U. S. Attorney General was filed.

(Vide page 3.)

Los Angeles, *May* 11*th*, 1855.

In same case, the notice of appeal from U. S. Attorney General was filed.

Los Angeles, *Sept.* 28*th*, 1855.

In same case, the petition of the United States for review was filed.

(Vide page 3.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

Los Angeles, *Sept.* 28*th*, 1855.

In same case, the answer of appellee was filed.

(Vide page 4.)

Los Angeles, *Oct.* 3*d*, 1855.

In the same case, the opinion of the court confirming the claim was delivered, and the following decree entered.

(Vide page 5.)

Los Angeles, *Oct.* 18*th*, 1855.

In the same case, on motion of P. Ord, U. S. attorney, the following order for appeal was filed.

(Vide page 6.)

Notice of Appeal.

Office of the Attorney General of the United States,
Washington, 10*th February*, 1855.

Fernando Tico
vs.
The United States. } 139.

You will please take notice, that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 25th day of November, 1854, the appeal in the district court of the United States for the southern judicial district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Filed April 10th, 1855.

C. E. CARR, *Cl'k.*

Petition of United States for Review.

In the District Court of the United States for the southern district of California—Hon. Isaac S. K. Ogier, judge.

FERNANDO TICO ads. THE UNITED STATES. } No. 168.—(Transcript No. 139.)

The petition of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, respectfully represents, that on or about the 30th day of March, A. D. 1852, Fernando Tico petitioned the Board of United States Land Commissioners for the State of California, claiming the place called Ojay, in the county of Santa Barbara, State of California. That on or about the 16th day of May, A. D. 1854, the said commissioners confirmed the said claim; that on or about the 19th day of December, A. D. 1854, the said commissioners * * caused a certified transcript of their proceedings, with the evidence and decision in said cause, to be filed in the office of the clerk of this honorable court; that on or about the 25th day of November, A. D. 1854, the Hon'ble Caleb Cushing, Attorney General of the United States, received a certified transcript of the proceedings, evidence, and decision of said board of commissioners in said cause. That thereafter, to wit, on or about the 10th day of April, A. D. 1855, the said Attorney General filed, or caused to be filed, in said clerk's office a notice of intention of the said United States to prosecute the appeal in said cause; that the land claimed lies in the southern district of California, and within the jurisdiction of this hon'ble court; and the said United States denies, generally, the validity of claimant's right or title to said land. Wherefore the petitioner prays, that the said Fernando Tico or his attorney may be served with a copy of this petition; and that, after due proceedings had, the said decision of the said commissioners in said cause may be reviewed, reversed, and set aside, and that the said claim or title may be decreed to be invalid; and general relief.

P. ORD,
Attorney of the U. S. for the southern district of Cal'a.

Filed Sept. 28th, 1855.

C. E. CARR, *Clerk.*
By J. W. ROSS, *Dep'y.*

No. 168.

Answer.

In the United States District Court for the southern district of California.

THE UNITED STATES, appellants, vs. FERNANDO TICO, appellee. } Answer of Appellee.

Fernando Tico, appellee, appears by his attorneys, and for answer to the petition of the United States filed herein, says:

That his title to the land called "Ojay," as set forth and described in his petition to the Board of Commissioners, and in the documentary and other evidence in this case, is a good and valid title; and he prays this honorable court to affirm the decision of the Board of Commissioners, and to decree his title to be valid.

HALLECK, PEACHY & BILLINGS,
Att'ys for Appellee.

Filed Sept. 28, 1855.

C. E. CARR, *Clerk.*
By J. W. ROSS, *Dep'y.*

Decree.

DISTRICT COURT OF THE UNITED STATES,
Southern District of California.

THE UNITED STATES, appellants,
vs.
FERNANDO TICO, appellee.
} No. 168—Ojay.

This case coming on to be heard, at a special term of this court, on an appeal from the final decision of the commissioners to ascertain and settle private land claims in the State of California, under an act of Congress approved March 3d, 1851, on the transcript of the proceedings and decision, and the papers and evidence on which said decision was founded, and it appearing that said transcript has been duly filed according to law, and counsel for the respective parties having been heard: it is ordered, adjudged, and decreed, that the decision of said commissioners be affirmed; and it is further ordered, adjudged and decreed, that the claim of the said Francisco Tico is a good and valid claim, and that the same be and is hereby confirmed to the land situated in the county of Santa Barbara, and known by the name of "Ojay," being the same which has been held and occupied by him since the date of this grant, and bounded on the west by the Arroyo Mateligan, on the north by the sierra, on the east by the Arroyo de Sirsa, and on the south by the two hills, and containing (4) four square leagues, as shown by the map filed with the expediente, to which reference is made in the original, copies of which grant and map are on file with the papers in this case.

ISAAC S. K. OGIER,
U. S. District Judge for the southern district of Cal'a.

In the U. States District Court for the Southern District of California.

Special term, Sept., 1855.—Los Angeles.

FERNANDO TICO, app'ee,
ads.
THE UNITED STATES, app'ts.
} No. 168—Transcript No. 139.

On motion of P. Ord, attorney of the United States for the southern district of California, it is ordered by the court, that an appeal be